89-288

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

DOUBLETREE, a Wyoming corporation, ROGER K. BOWER, ALDEN INSURANCE AGENCY, a Wyoming corporation, and LARRY R. ALDEN,

Petitioners,

vs.

WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa, as Liquidator of IOWA NATIONAL MUTUAL INSURANCE COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

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QUESTIONS PRESENTED

I.

Does Section 507C.4(3)(a) of the Iowa Code, which asserts personal jurisdiction in Iowa over persons "in any way" obligated under an agency or brokerage arrangement to an insolvent insurance company domiciled in Iowa, violate the Due Process Clause of the Fourteenth Amendment when applied to nonresident Wyoming citizens whose only contact was signing a personal guarantee of insurance agency agreements in Wyoming?

II.

Is it fair and reasonable, in a manner consistent with the Due Process Clause, for Wyoming insurance agents, who maintained their offices, employees and sales in Wyoming, and were solicited in Wyoming to sell insurance for an Iowa insurance company, to be subjected to personal jurisdiction in Iowa in an action by the Liquidator of the failed Iowa insurance company?

LIST OF PARTIES

Petitioners herein and Appellants below:

Doubletree, Alden Insurance Agency[1] Roger K. Bower and Larry R. Alden.

Respondent herein and Appellee below:

William D. Hager, Commissioner of Insurance of the State of Iowa, as Liquidator of Iowa National Mutual Insurance Company.

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[1] Doubletree and Alden Insurance Agency, are Wyoming corporations. Neither corporation has subsidiary companies, parent companies nor affiliated companies.

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vs.

WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa, as Liquidator of IOWA NATIONAL MUTUAL INSURANCE COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

Petitioners pray that a Writ of Certiorari be issued to review the Judgment of the Supreme Court of the State of Iowa entered on May 17, 1989.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Iowa, dated May 17, 1989, is printed at Appendix "A" hereto and is reported as *Hager v. Doubletree*, 440 N.W.2d 603 (Iowa 1989).

The Iowa District Court for Polk County, Fifth Judicial District, entered its Orders dated March 23, 1988, entitled "Ruling on Motions to Dismiss". These Orders are unreported and are printed as Appendix "B".

JURISDICTION

On May 17, 1989, the Supreme Court of Iowa entered its opinion and judgment affirming the denial of petitioners' motions to dismiss. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The statute relied upon by Respondent in establishing *in personam* jurisdiction over Petitioners is Section 507C.4(3) (a) of the Iowa Code which provides:

> "3. A court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Iowa rules of civil procedure or other applicable provisions in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state for any of the following:
>
> a. In an action on or incident to an obligation if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker."

Section 507C.4(5) of the Iowa Code further provides:

> "All action authorized in this chapter shall be brought in the district court in Polk county."

The Due Process Clause of the Fourteenth Amendment provides that:

> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . " U.S. Constitution, Amend. XIV, § 1.

STATEMENT OF THE CASE

Iowa National Mutual Insurance Company, (Iowa National), whose home office was Cedar Rapids, Iowa, was put into liquidation on October 10, 1985, under the "Insurers Supervision, Rehabilitation and Liquidation Act", Chapter 507C, Code of Iowa (1985). Respondent William D. Hager, Commissioner of Insurance of the State of Iowa, was appointed Liquidator of Iowa National Mutual Insurance Company (Liquidator). At the time of liquidation, the Respondent claimed that $31,667,610.00 was due to the Liquidator from 1,360 agents under contract with Iowa National in fifteen (15) different states.

Using Section 507C.4 of the Iowa Code, the Liquidator began suing nonresident agents and individual personal guarantors in the District Court of Polk County, Iowa, to collect the sums claimed to be due from many

nonresidents in various states.[1] This case represents two of the cases filed by the Respondent.[2]

Petitioners Doubletree and Alden Insurance Agency (the "Agencies") are Wyoming corporations who acted as insurance agents in Wyoming for Iowa National. Petitioners Roger K. Bower and Larry R. Alden are citizens of the State of Wyoming. Petitioners Bower and Alden were personal guarantors for Doubletree and Alden Insurance Agency, respectively, guaranteeing the Agencies' accounts with Iowa National.

Wyoming was one of the states in which Iowa National Mutual Insurance Company was licensed to conduct its insurance business. To encourage and promote the availability of its insurance services, Iowa National placed authorized representatives in the State of Wyoming to solicit local Wyoming agents to enter into agency agreements and to receive and transmit to Iowa National proposals for insurance on insurers within the State of Wyoming. Doubletree, through various agency agreements, contracted with Iowa National as early as 1973 to represent Iowa National as an agent in the State

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[1] When the Liquidator began suing for recovery of agency accounts, the Polk County District Court docketed each action as a sub-file of the liquidation proceeding and numbered each case consecutively (with some omissions) thereafter. Petitioners' cases were numbered 618 and 619, which will give the Court some idea of the number of actions filed by the Liquidator.

[2] These cases were consolidated upon appeal to the Iowa Supreme Court.

of Wyoming. The action filed below against Doubletree is based on an agency agreement which was dated May 8, 1984. Alden Insurance Agency contracted with Iowa National on August 9, 1983.[3]

Each of the agency agreements contained provisions for the personal guarantee of the full and faithful performance of Section XII, PREMIUM ACCOUNTING, by an individual. Roger K. Bower signed the personal guarantee for Doubletree on May 8, 1984; Larry R. Alden signed the personal guarantee for Alden Insurance Agency on October 11, 1983.

Neither agency agreement was signed in the State of Iowa by any party. The agency agreements were signed by the Agencies and personal guarantors in the State of Wyoming and signed by Iowa National at its nearest branch office in Denver, Colorado, or in Wyoming. The initiation of the contact with Iowa National which resulted in guaranteeing the agreement and for entering into the agency agreement on behalf of the Agencies occurred within the State of Wyoming by representatives of Iowa National.

Both of the personal guarantors stated that they had no expectation that either their company or themselves would be required to appear in a court in Iowa in any matter arising under the terms of the agency agreements.

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[3] Both contracts were entered into before the adoption by Iowa of the "Insurers Supervision, Rehabilitation and Liquidation Act", Chapter 507C, Iowa Code, which was effective July 1, 1984.

The agency agreements did not contain either a choice of law or a choice of forum provision.

Prior to entering into the contract with Iowa National, Bower and Alden both stated that they did not have any contact with the home office located in Cedar Rapids, Iowa, concerning the terms and conditions of the agency agreement. Neither Bower nor Alden have ever been within the boundaries of the State of Iowa.

Bower and Alden did not personally pay any accounts due from Doubletree or Alden Insurance Agency to Iowa National, nor did they personally ever mail any of their personal funds for payment of Doubletree or Alden Insurance Agency's accounts due Iowa National. Essentially, there is no evidence in the record to indicate that either Roger K. Bower or Larry R. Alden contacted Iowa National outside of their scope of employment as the principal officers of their respective Agencies and their guarantee.

Each of the Agencies were licensed under the laws of the State of Wyoming to conduct business as independent insurance agents in Wyoming. The agencies never issued an insurance policy on behalf of Iowa National to any person who resided in the State of Iowa or to a company that was authorized to do business within the State of Iowa.

Most contacts by Petitioners with Iowa National were through a branch office of Iowa National in Denver, Colorado. The only day-to-day contact Wyoming agents had regarding the service of insurance policies was the issuance of commercial umbrella policies which required a quote to the agent from the home office. In 12 years as an

agent for Iowa National, Doubletree never issued a commercial umbrella policy. Alden Insurance Agency apparently issued one commercial umbrella policy for Iowa National.

Iowa National's home office set policies and promulgated rules and regulations which were, frequently, communicated by the home office directly to the agents. All agency accounting was handled by the home office in Cedar Rapids, and monthly statements to agents showing premiums owed by and commissions due to them were prepared in Cedar Rapids and mailed directly to the agents. Agents were to submit their premium payments directly to Cedar Rapids, although payments may have been sent to Iowa National's branch office in Denver, Colorado.

On November 6, 1987, the Plaintiff below, William D. Hager, as Liquidator for Iowa National, filed his action in the Polk County District Court, Polk County, Iowa, against the Petitioners herein seeking unpaid premiums, including the full unpaid, unearned premiums due for policies cancelled by the Liquidator. Each of the Petitioners were personally served in Wyoming. Before answering the complaint, each Petitioner filed a Motion to Dismiss the action on the ground that the personal jurisdiction asserted by the Court "offends the limitations on a State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America". (Motions to Dismiss) The Polk County District Court entered its Orders on March 23, 1988, entitled "Ruling on Motions to Dismiss" denying the Motions to Dismiss as to each of the Petitioners herein, concluding that "[t]he special legislation combined with the

facts and the personal quarantee herein confers jurisdiction upon this Court." (App. 21 & 29).

The Petitioners timely filed a petition for a writ of certiorari to the Polk County District Court's rulings with the Iowa Supreme Court raising the claim that § 507C.4 of the Iowa Code was offensive to the Due Process Clause of the Fourteenth Amendment.

The Iowa Supreme Court treated the petition for a writ of certiorari as an application to grant an appeal of an interlocutory ruling and granted petitioners the right to appeal. On appeal, petitioners again raised the issue whether the Iowa Code was valid under the Due Process Clause and whether petitioners had sufficient minimum contacts to sustain personal jurisdiction in Iowa.

On May 17, 1989, the opinion of the Iowa Supreme Court was entered affirming the Polk County District Court's order denying petitioners' motions to dismiss for lack of jurisdiction finding that § 507C.4 was constitutionally valid as applied under the Due Process Clause of the Fourteenth Amendment.

REASONS FOR GRANTING WRIT

The decision of the Iowa Supreme Court should be reviewed by this Court because it is not in accord with the previous decisions of this Court set forth in a line of cases most notable of which are *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945); *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228 (1958); and *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S.

286, 100 S.Ct. 559 (1980). These questions are of major significance as at least thirteen states have adopted similar personal jurisdiction statutes in connection with their insurance insolvency laws.

Iowa's "Insurers Supervision, Rehabilitation and Liquidation Act" is, with some minor changes, the same as the Insurers Supervision, Rehabilitation and Liquidation Model Act adopted by the National Association of Insurance Commissioners (NAIC) in December, 1977. See *NAIC Model Insurance Laws, Regulations and Guidelines,* 555-1 to 555-32 (1988). The Model Act, or its equivalent, has been adopted in at least thirteen states. *Id.* at 555-44 to 555-47.

The Iowa Supreme Court, in applying Iowa Code 507C.4 to the Petitioners, all non-residents of the State of Iowa, exceeds the jurisdictional limitations placed upon the State of Iowa by the Fourteenth Amendment to the Constitution of the United States of America and infringes upon the individual liberty interests of these petitioners recognized by this Court. See *Insurance Corp. of Ireland v. Compagnie Des Bauxites,* 456 U.S.694, 102 S.Ct. 2099 (1982).

The manifest interest of a State in proceeding with the liquidation of an insolvent insurance company cannot override the case-by-case analysis required in determining sufficient minimum contacts under the Fourteenth Amendment. In *Kulko v. Superior Court of California,* 436 U.S. 84, 98 S.Ct. 1690 (1978), the Court stated that:

> "Like any standard that requires a determination of 'reasonableness', the 'minimum contacts' test of *International Shoe* is not susceptible of mechanical application, rather; the facts of each

> case must be weighed to determine, whether the requisite 'affiliating circumstances' are present. *Hanson v. Denckla*, 357 U.S. 235, 246, 78 S.Ct. 1228, 1235 (1958); 2 L.Ed.2d 1283 (1958)" 436 U.S. at 92, 98 S.Ct. at 1697.

One consistent theme in a prolific line of cases concerning jurisdiction has been that the generalization of a rule pertaining to personal jurisdiction is prohibited:

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative." *International Shoe Co. v. State of Washington*, 326 U.S. 310, 319, 66 S.Ct. 154, 159 (1954)

Section 507C.4(3) of the Iowa Code does not require that even one act or transaction occur within the State of Iowa. The only criteria to meet the statutory scope of jurisdiction under Section 507C.4(3) is that a person owe money to an Iowa insurer "under an agent or brokerage arrangement". The statute does not require that such arrangement be performed either in whole or in part in the State of Iowa. It lacks even a semblance of the notions of fair play and reasonableness which have been the hallmarks of *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945).

This special jurisdictional legislation avoids a rational means to determine the type of conduct or activity which would subject a nonresident defendant to jurisdiction within the State of Iowa. The requisite "affiliating circumstances" of *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240 (1958), are not set forth in Section 507C.4(3). The statute is mechanical in its application

without regard to the origin of the obligation or the contacts between the person and forum state.

In its analysis below, the Iowa Supreme Court misapplies *Burger King v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174 (1985) to engage in unwarranted corporate veil piercing. The attribution of corporation contacts to its officers to obtain personal jurisdiction over the individual does not comport with the prior decisions of this Court requiring sufficient minimum contacts, the requisite of due process.

No continued or substantial connection existed between the personal guarantors and the State of Iowa. The only contact was a contract signed in Wyoming. No acts of the personal guarantors, as such, occurred after the signing of the contract. To treat the contract alone as sufficient minimum contact for the personal guarantors is to impose an implied consent to jurisdiction in Iowa when the agency agreement contained neither a choice of law nor a choice of forum provision. Even *Burger King v. Rudzewicz, supra,* rejected the concept that a single contract can establish minimum contact:

> At the outset, we note a continued division among the lower courts respecting whether and to what extent a contract can constitute a 'contact' for purposes of due process analysis. If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot." 471 U.S. at 478, 105 S.Ct. at 2185.

The focus of the analysis of minimum contacts must be on " . . . those affiliating circumstances that are a

necessary predicate to any exercise of state-court jurisdiction". *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 285, 296, 100 S.Ct. 559, 566 (1980). The Agencies were not authorized to conduct business in Iowa. They were Wyoming corporations licensed to sell insurance in Wyoming and maintained their offices in Wyoming. They did not sell policies to Iowa residents nor did they conduct their business within the State of Iowa. If there was "purposeful availment" of another state's laws, it was Iowa National entering the Wyoming marketplace to sell insurance within the State of Wyoming.

It is neither "fair" nor "reasonable" to now require that these Petitioners defend themselves in an Iowa Court in a matter arising out of Iowa National's insolvency, an event over which agents had no control. Section 507C.4 of the Iowa Code, and its application by the Iowa courts, gives greater weight to the interest of the state in liquidating a domicile insurance company than the reasonableness of requiring nonresidents to answer litigation in a distant forum.

This court should decide the important constitutional issue that special jurisdictional statutes created by states to enhance the liquidation of insolvent insurance companies do not outweigh the individual liberties of nonresidents protected by the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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August 10, 1989

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF IOWA

WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa, as Liquidator of IOWA NATIONAL MUTUAL INSURANCE COMPANY,	)	(Filed May 17, 1989)
Appellee,	)	134
vs.	)	88-581
DOUBLETREE, A Wyoming Corporation; ROGER K. BOWER; ALDEN INSURANCE AGENCY, A Wyoming Corporation; and LARRY R. ALDEN,	)	
Appellant.	)	

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Interlocutory appeal from order denying motion to dismiss for lack of personal jurisdiction. AFFIRMED.

Dennis M. Kirven of Kirven & Kirven, Buffalo, Wyoming, and Harry Perkins III of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellants.

Philip Ostien and John K. Vernon of Davis, Grace, Horvath, Gonnerman & Rouwenhorst, P. C., Des Moines, for appellee.

Considered by Harris, P.J., and Larson, Neuman, Snell, and Andreasen, JJ.

LARSON, J.

Iowa National Mutual Insurance Company became insolvent and, pursuant to statute, the Iowa Commissioner of Insurance was appointed as liquidator. *See* Iowa Code § 507C.16-.18 (1987). As a part of his winding up of the company's affairs, the liquidator sued these defendants for unpaid premiums owed to Iowa National. The defendants, all nonresidents of Iowa, challenged the jurisdiction of the court on the ground that they lacked sufficient contact with Iowa to confer personal jurisdiction on an Iowa court. The district court rejected the jurisdictional challenge, and the defendants petitioned for a writ of certiorari. We considered the certiorari petition as an application for interlocutory appeal and granted the application. *See* Iowa R. App. P. 2, 304. We now affirm.[1]

The defendants Doubletree and the Alden Insurance Agency are Wyoming insurance companies who acted as agents in that state for Iowa National. Defendants Roger K. Bower and Larry R. Alden were personal guarantors for Doubletree and Alden Insurance Agencies, respectively, guaranteeing the companies' accounts with Iowa National. We will frequently refer to these defendants collectively as Doubletree.

William D. Hager, the Iowa Insurance Commissioner, is authorized by statute to collect all "debts and money due and claims belonging to the insurer, wherever

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[1] Because the initial challenge to the district court's order was couched as an action in certiorari, the Iowa District Court was originally shown as the defendant. The caption has now been changed to show the case as an appeal.

located," Iowa Code § 507C.21(f), and to file suit if necessary to collect them. Iowa Code § 507C.21(1). Iowa Code section 507C.4 provides this grant of jurisdiction for Iowa courts to implement the liquidator's authority:

> 3. A court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Iowa rules of civil procedure or other applicable provisions in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state for any of the following:
>
> *a.* In an action or incident to an obligation if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker.

This section provides for jurisdiction in an action by a *receiver*; however, section 507C.2(14) includes liquidators within the definition of receivers.

Doubletree attacks the statute on constitutional grounds, claiming it is invalid on its face and invalid as applied.

I. *The Facial Challenge.*

Doubletree challenges section 507C.4 on its face, because it does not require "minimum contacts" as a prerequisite to the exercise of personal jurisdiction. *See International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1940).[2]

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[2] Hager argues that the facial challenge was not raised in district court. However, our reading of the record suggests it

(Continued on following page)

We will construe a statute in such a way as to preserve it and render it constitutional, if possible. *Hines v. Illinois Cent. Gulf R.R.*, 330 N.W.2d 284, 290 (Iowa 1983). We believe such a construction is appropriate here. Section 507C.4(3) provides that "[a] court having jurisdiction of the subject matter has jurisdiction over a person *served pursuant to the Iowa rules of civil procedure* or other applicable provisions. . . ." In connection with service of notice, Iowa Rule of Civil Procedure 56.2 provides that

> [e]very corporation, individual, personal representative, partnership or association that shall have the *necessary minimum contact* with the state of Iowa shall be subject to the jurisdiction of the courts of this state, and the courts of this state shall hold such corporation, individual, personal representative, partnership or association amenable to suit in Iowa in every case not contrary to the provisions of the constitution of the United States.

(Emphasis added.)

We have stated that rule 56.2 "expands Iowa's jurisdictional reach to the widest due process parameters of the federal constitution." *Larson v. Scholl*, 296 N.W.2d 785, 788 (Iowa 1980). Iowa Code section 507C.4 must be considered as incorporating the requirements of "necessary minimum contact[s]" as embodied in rule 56.2 thereby adopting the minimum contacts principles of *International*

(Continued from previous page)

was raised, at least minimally, by the defendants' motions to dismiss and supporting memoranda. We therefore address the facial invalidity argument on its merits.

Shoe. We conclude that the statute when considered in this manner is facially valid.

II. *Validity of Section 507C.4(3) as Applied.*

Doubletree's second issue raises the validity of section 507C.4(3) as applied, arguing that under the facts of this case the agents lacked sufficient contacts with Iowa to permit an Iowa court to exercise personal jurisdiction over them or their guarantors. In order to resolve this issue, a short statement of the facts is necessary. The agency agreements in evidence were signed by Iowa National with Doubletree and Alden Insurance on May 8, 1984, and August 9, 1983, respectively. Under these agreements, the agents were to represent Iowa National in the State of Wyoming. Roger K. Bower and Larry R. Alden, principals in their respective companies, signed the agency agreements as guarantors. These agency agreements remained in force until Iowa National was placed in liquidation on October 10, 1985, under Iowa's "Insurers Supervision, Rehabilitation and Liquidation Act," Iowa Code ch. 507C (1985). At this time, both Doubletree and Alden Insurance were indebted to Iowa National for premiums collected by them.

Any discussion of personal jurisdiction under facts such as these must begin with *International Shoe*, which held that sufficient "minimum contacts" must exist between the defendant and the forum state in order to make the court's assertion of jurisdiction consistent with "traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316, 66 S. Ct. at 158, 90 L. Ed. at 102.

These principles of due process and the exercise of jurisdiction over nonresidents have been further developed by the Supreme Court in later cases. *See, e.g., Burger King v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 235 (1958); *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1958). Our court has also considered similar issues of personal jurisdiction. *See, e.g., Al-Jon, Inc. v. Garden St. Iron & Metal Co.*, 301 N.W.2d 709 (Iowa 1981); *Larsen v. Scholl*, 296 N.W.2d 785 (Iowa 1980); *Kagin's Numismatic Auctions, Inc. v. Criswell*, 284 N.W.2d 224 (Iowa 1979).

Doubletree claims that section 507C.4(3) is insufficient to confer jurisdiction on an Iowa court even though its language purports to do so. Doubletree argues that the statute may not create its own jurisdiction, that personal jurisdiction must be based on the facts in the case, and that the defendants' contacts with Iowa were not sufficient to satisfy the test for constitutionality. The statute must therefore be held to be unconstitutional as applied.

Doubletree's claim of insufficient contacts is based on several factors: the agency agreements were signed by the agents in Wyoming and for Iowa National by its authorized representative in either Colorado or Wyoming; none of the parties signed in Iowa. The initial contacts to establish the agency relationships were by Iowa National which sent representatives to Wyoming for that purpose. The Wyoming agents did not write any insurance for persons in Iowa, and they did not maintain any offices or hire any employees in Iowa. All direct contacts between

Iowa National and the defendants, they claim, occurred outside of Iowa or were handled by mail or telephone. Most contacts between the defendants and Iowa National were through a branch office of Iowa National in Denver, Colorado. The only direct dealings on a day-to-day basis between the defendants and the home office in Iowa were in connection with commercial umbrella policies, which apparently had to be approved by the home office. (Only Alden Insurance was shown to have had direct dealings with the home office on these policies, and that dealing was quite limited. The record is silent as to any direct contact between Doubletree and the home office concerning such policies.)

Doubletree's argument is that, to obtain personal jurisdiction over the defendants, Hager would have to show that the defendants "purposefully established minimum contacts with the foreign state," and those contacts would "be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " Doubletree argues that the record lacks any showing that the defendants "purposefully established" contacts in Iowa. Without a showing that a nonresident defendant affirmatively sought to avail itself of the laws or benefits of the State of Iowa, Doubletree argues, there can be no finding of sufficient minimum contacts.

Hager, understandably, sees the matter of contacts in a different light. As to the individual guarantors, Bower and Alden, he points out they were principal officers in their respective companies and signed the guaranty agreements in order to induce Iowa National to designate the defendant companies as agents. The guarantors and

their respective companies signed the agency agreements with Iowa National and therefore created substantial, ongoing connections with the State of Iowa.

Moreover, Iowa National's home office set policies and promulgated rules and regulations which were, frequently, communicated by the home office directly to the agents. All agency accounting was handled by the home office in Cedar Rapids, and monthly statements to agents showing premiums owed by and commissions due to them were prepared in Cedar Rapids and mailed directly to the agents. Agents were to submit their premium payments directly to Cedar Rapids, and any problems with agents' accounts were to be handled by mail or telephone directly between Cedar Rapids and the agents.

Several similarities in the facts of *Burger King* and the present case are apparent. In *Burger King*, the plaintiff sued a nonresident franchisee, a resident of Michigan, in the plaintiff's own state of Florida. The defendant argued that his relationship with Florida was insufficient to confer jurisdiction on a Florida court. In *Burger King*, the relationship between the company and the defendants had been quite attenuated. The defendant had apparently never been in Florida. Direct supervision of the defendant came from a Burger King district office in Michigan, not Florida, and the defendant apparently believed that the Michigan office "was for all intents and purposes the embodiment of Burger King." The Supreme Court, citing several of its earlier cases, stated the general rule as follows:

> Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. Thus where the defendant "deliberately" has engaged in significant activities within a State, or has created "continuing obligations" between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Burger King, 471 U.S. at 475-76, 105 S. Ct. at 2184, 85 L. Ed. 2d at 542-43 (citations omitted). The Court made it clear that a defendant's physical presence in the forum state is not a prerequisite to finding sufficient contacts, saying

> it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

Id. at 476, 105 S. Ct. at 2184, 85 L. Ed. 2d at 543.

In applying the general rules for personal jurisdiction, the Court in *Burger King* noted a division among the federal circuits respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis. *Id.* at 478, 105 S. Ct. at 2185, 85 L. Ed. 2d at 544. The court concluded that a contract *alone* cannot

automatically establish sufficient contacts, but it went on to observe the following, which we believe is pertinent here:

> [A] "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of business transaction." It is these factors--prior negotiations and contemplated future consequences, along with the terms of the contract and the parties actual course of dealing--that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

Id. at 479, 105 S. Ct. at 2185, 85 L. Ed. 2d at 545 (citation omitted).

It is true that a plaintiff who has unilaterally sought out a nonresident cannot create a basis for personal jurisdiction on that fact alone.

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirements of contact with the forum State. The application of that rule will vary with the quality and nature of the defenadant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

Hanson, 357 U.S. at 253, 78 S. Ct. at 1239, 2 L. Ed. 2d at 1298.

The defendants in this case place great reliance on the fact that the initial contact was made by Iowa National, not the defendants. We believe under the facts

of this case the defendants place too much emphasis on that fact. While the initial contact was made by Iowa National, this initial contact developed into something significantly more: a contractual relationship which lasted several years and involved frequent contacts by telephone and mailed correspondence, together with substantial oversight by the home office in Iowa. We believe this relationship is capable of providing the "future consequences" and "actual course of dealing" which may form the basis of jurisdiction. *See Burger King*, 471 U.S. at 479, 105 S. Ct. at 2185, 85 L. Ed. 2d at 545.

While Iowa National initiated the contacts in Wyoming, what followed was a continuing business relationship which itself is the basis for jurisdiction under the reasoning of *Burger King*. This situation is a little like a marriage: while it was Iowa National who proposed, Doubletree accepted, and the resulting relationship makes it relatively insignificant which party started it all.

In *Burger King*, as in the present case, the defendants

> entered into a . . . relationship [with the plaintiff] that envisioned continuing a wide-reaching context with [the plaintiff in the plaintiff's state.] In light of [the defendant's] voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the quality and nature" of his relationship to the company in Florida can in no sense be viewed as "random," "fortuitous," or "attenuated."

471 U.S. at 480, 105 S. Ct. at 2186, 85 L. Ed. 2d at 545-46. Under these circumstances, the Court held it was presumptively reasonable that the defendant be called to

answer in a Florida court. Id. at 481, 105 S. Ct. at 2187, 85 L. Ed. 2d at 546.

In this case, the overall supervision of agents' accounts from the Cedar Rapids office, the requirement for payments of premiums to be made by agents directly to the Cedar Rapids office, the formulation and promulgation of company policies and rules directly to agents, the direct control of the home office over certain commercial policies, and the overall control exercised by the Cedar Rapids office are all significant factors. But most important, these defendants voluntarily entered into contracts with substantial Iowa ties and which anticipated long-term relationships with Iowa National's home office.

The Wisconsin Supreme Court considered similar questions of personal jurisdiction in *In re All-Star Insurance Corp.*, 110 Wis. 2d 72, 327 N.W.2d 648 (1983). In that case, an insurance company was ordered into liquidation, and the nonresident agents of the company were sued by the liquidator in the state of residency of the company. The agents challenged the court's jurisdiction on grounds that the defendants lacked sufficient minimum contacts with the forum state.

In *All-Star*, as in the present case, the insurance company initiated the agency relationship. The company was a resident of Wisconsin, and the two agents involved in this litigation were residents of Illinois and Louisiana, respectively. The only contacts between the company and the agents were their respective agency contracts with the insurance company "and their actions incident to those

contracts." Neither defendant was a resident of Wisconsin at any time during the agency relationship, and they maintained no place of business there. Neither maintained any property, mailing address, telephone listing, or subagents in the forum state. All of the contacts between the defendants pursuant to the agency contract occurred outside of Wisconsin or by interstate mail or telephone. *Id.* at 73-74, 327 N.W.2d at 649-50.

Wisconsin had a personal jurisdiction statute for use against nonresident debtors of insolvent insurance companies much like Iowa's section 507C.4(3)(a), and the liquidator in the *All-Star* case relied on the statute in asserting jurisdiction over the Louisiana and Illinois agents. *Id.* at 74, 327 N.W.2d at 650. The defendants challenged the statute on due process grounds, asserting a lack of sufficient contacts.

In upholding the exercise of personal jurisdiction, the Wisconsin court said:

> The defendants are involved in the highly regulated insurance business. They both acted as agents soliciting insurance applications which were sent to All-Star in Wisconsin. All-Star performed its part of the contract entirely in Wisconsin. Scarborough and APS acted as agents for All-Star for four and two years, respectively. During these years the defendants made numerous phone calls to Wisconsin. Further, the contract required that the defendants send, on a monthly basis, premium payments to Wisconsin on all applications solicited by the defendants and accepted by All-Star. Thus, the two agency contracts between the defendants and All-Star had a "substantial connection" with the state of Wisconsin.

All-Star, 110 Wis. at 77, 327 N.W.2d at 654.

The interest of a state in providing a forum for suits against nonresidents, while not weighing as heavily as other factors in the minimum contact analysis, must nevertheless be considered. *See Al-Jon*, 301 N.W.2d at 711; Larsen, 296 N.W.2d at 788. Iowa's interest in orderly liquidation of insolvent insurance companies is shown by the statement of purpose found in Iowa Code section 507C.1(4):

> The purpose of this chapter is the protection of the interests of insureds, claimants, creditors, and the public, with minimum interference with the normal prerogatives of the owners and managers of insurers through all of the following:
>
> . . . .
>
> *c.* Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation.
>
> . . . .
>
> *e.* Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state.
>
> *f.* Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

The Wisconsin court also found that the practicalities of the case militated in favor of Wisconsin as the forum state. As in this case, most of the witnesses and evidence were located in the forum state, and weighing the relative inconvenience of the parties pointed to Wisconsin as the logical forum state. The inconvenience to the defendants

was not unreasonable, particularly when compared to the inconvenience to the insurance company if forced to litigate in another state. Convenience of the parties is one of the factors to be considered, although it is not as significant as those factors directly touching the nature, quality, or quantity of the contacts. *Al-Jon*, 301 N.W.2d at 711. In the present case, Iowa National had 1360 agents in 15 states who were indebted to the company at the time of its liquidation. We believe, as the court did in *All-Star*, that this is a significant factor weighing in favor of Iowa as the forum state.

When all of the relevant factors are considered, we believe that sufficient contacts existed between the defendants and Iowa National's home office to allow personal jurisdiction consistent with due process. We conclude that section 507C.4(3)(a) is constitutional as applied and therefore affirm.

AFFIRMED.

APPENDIX B

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WILLIAM D. HAGER, Commissioner of Insurance of the state of Iowa, as Liquidator of Iowa National Mutual Insurance Company, Plaintiff, vs. ALDEN INSURANCE AGENCY and LARRY R. ALDEN, Defendants.	Equity No. CE23-13565-618 RULING ON MOTIONS TO DISMISS

(Filed March 23, 1988)

The above-captioned matter came on for hearing before the undersigned Judge on March 11, 1988, on the Separate Motions to Dismiss filed by Defendants Alden Insurance Agency and Larry R. Alden. The hearing was held by telephone conference. Plaintiff was represented at the hearing by Attorney John Vernon. The Defendants were represented at the hearing by Attorney Dennis Kirven. The Court, having reviewed the record and file herein, having heard the statements of counsel, and being otherwise fully advised in the premises, finds the following ruling should be entered.

STATEMENT OF THE CASE

This case comes before this Court upon the Petition of William D. Hager, commissioner of Insurance of the State of Iowa, serving as Liquidator of Iowa National Mutual Insurance company. The Petition was filed Pursuant to Iowa Code Chapter 507c as part of the Liquidator's duties to collect "debts and monies due and claims belonging to the insurer, wherever located" (Section 507C.21(1)(f)). The Liquidator herein claims certain monies past due and owing from both the corporate Defendant (Alden Insurance Agency) and the individual Defendant (Larry R. Alden) pursuant to Section 507C.33(1)(a) in the amount of $9,166.80 in unpaid premium and unearned commission. The Petition alleges the individual Defendant, Larry R. Alden, personally guaranteed "the full and faithful performance of section XII, PREMIUM ACCOUNTING, of the company-Agency Agreement" between Iowa National and Alden Insurance Agency.

Both the individual Defendant, a resident of Wyoming, and the corporate Defendant, a Wyoming corporation, herein challenge the jurisdiction of the Iowa court.

The Liquidator is specifically empowered to sue to collect agents' balances in the Iowa District court for Polk county, section 507C.4(5); and Personal jurisdiction over persons sued "in an action on or incident to an obligation, if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement," is specifically conferred by statute, Section 507C.4(3)(a), assuming proper service.

The Court adopts, as it is required to do, the uncontroverted statements made in the Petition and affidavits herein. See *Norton v. Local Loan*, 251 N.W.2d 520, 521 (Iowa 1977).

CONCLUSIONS

As well pointed out by the Defendants in their Brief, to establish personal jurisdiction over a nonresident defendant, the defendant must have sufficient minimum contacts with the state of Iowa so as to comply with traditional notions of fair play and substantial justice. See *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). As such, Personal jurisdiction under Iowa Rule of Civil Procedure 56.2 is co-extensive with what is permitted by the Fourteenth Amendment due process clause to the United States Constitution. *Al-Jon, Inc. v. Garden Street Iron and Metal, Inc.*, 301 N.W.2d 709, 711 (Iowa 1981). Accordingly, Plaintiff must demonstrate the Defendants had sufficient minimum contacts with the state of Iowa to satisfy due process requirements.

For the reasons indicated by the Plaintiff in his "Resistance to Motions to Dismiss" and for the reasons indicated hereunder, this Court concludes the Motions to Dismiss filed by both the individual Defendant and the corporate Defendant should be overruled.

Without reiterating each of the contacts between the Iowa forum and the corporate Defendant as contained in the Affidavit of Michael Westhoff, this court simply notes numerous contacts are so indicated. It is clear to the

Court from reviewing the Affidavit that there was a continuous course of conduct and business between Alden Insurance Agency and Iowa National's home office in Cedar Rapids, Iowa, for about two years prior to insolvency and that all the umbrella underwriting and processing between the Plaintiff and the corporate Defendant herein was handled directly from Iowa National's home office in Cedar Rapids, Iowa. It is apparent that the corporate Defendant had to deal with the home office in Cedar Rapids each and every time an umbrella policy was sold. (See ¶6(d) of Michael Westhoff Affidavit and also Exhibit 7.)

It is also apparent to this court that the accounting and billing functions were prepared in Cedar Rapids, Iowa. Payment by the agency was to be remitted to the home office in Cedar Rapids, Iowa. Questions or problems dealing with an agency account were handled by the Agency Accounting Department in Cedar Rapids, Iowa. (See Exhibits 4, 5 and 6 of Westhoff Affidavit.) Of necessity, the corporate Defendant had numerous mail and phone contacts with the Plaintiff in the state of Iowa. *Midwest Packaging Corp. v. Oerlikon Plastics, Ltd.*, 279 F.Supp. 816, 818 (S.D. Iowa 1968). The Court is pursuaded by the rationale of *Matter of the Liquidation of All-Star Ins. Corp.*, 327 N.W.2d 648 (Wis. 1983), appeal dismissed for want of a substantial federal question, 461 U.S. 951 (1983), as applied to the facts of this case and finds that the Defendant Alden Insurance Agency's contacts with Iowa are such that it is fair and reasonable to require Defendant to defend this suit in this forum. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

The court concludes said corporate Defendant had sufficient minimum contacts within the state of Iowa, and accordingly its Motion to Dismiss should be overruled.

The Motion to Dismiss of the individual Defendant Larry R. Alden presents a substantially closer question.

The issue of the Motion to Dismiss filed by the individual Defendant herein is whether or not the signing of a "personal guarantee" establishes sufficient minimum contacts in the present situation to satisfy the due process clause of the Fourteenth Amendment. Iowa code Section 507C.4(3)(a) explicitly gives the Iowa courts personal jurisdiction over persons like Defendant in proceedings like this one.

Both counsel have briefed well the legal precepts involved in such determination, and the court sees no need to reiterate those precepts here.

It is clear to this Court that the individual Defendant knew he was guaranteeing a contract between an insurance company located in Cedar Rapids, Iowa, and his own Wyoming agency. He obviously also realized that many of the acts necessary for the performance of that contract by necessity would take place in Iowa. *Midwest Packaging Corp.* The individual Defendant, by signing a contract with an Iowa company, availed himself of the privilege of invoking the benefits and protections of Iowa's laws. Additionally, the state of Iowa would, and clearly does, have a significant interest in the ramifications of that personal guarantee.

Notwithstanding the individual Defendant's attempt to minimize his contact as simply the signing of a "Personal guarantee," it is clear to this Court that he realized such a personal guarantee was the key that allowed the corporate agency to do business with the Iowa corporation.

Additionally, the special legislation (Chapter 507c of the Code of Iowa), coupled with the facts of this case, confers jurisdiction over the individual Defendant herein. Section 507C.4(3)(a) provides:

> In an action on . . . an obligation if the person served is obligated to the insurer in any way *as an incident to an agency . . . arrangement* that may exist or has existed between the insurer and the agent or broker. (Emphasis added by the Court.)

This court concludes said statute serves as a quasi long-arm statute. It applies here. The special legislation combined with the facts and the personal guarantee herein confers jurisdiction upon this court. The foreseeability requirement that the Defendants could be sued in Iowa is met by Section 507C.4(3)(a) (effective date July 1, 1984).

All personal guarantors were thereafter on notice that if they entered into or continued in an agency agreement with an insurer domiciled in Iowa, and if the insurer became insolvent and was ordered liquidated, they (the personal guarantors) could expect to be sued by the Liquidator in Iowa on the company-Agency Agreement.

When an insurer is liquidated, agents' balances are likely to constitute a large share of its assets. Moreover,

they are assets difficult to collect. The Iowa Act makes collection of these balances easier and more economical by allowing the Iowa courts "to obtain jurisdiction over nonresident agents in order to efficiently and inexpensively gather up the outstanding assets of the insolvent insurer." *All-Star,* 327 N.W.2d at 653.

Iowa's interest in providing a forum for this suit and the others like it that are sure to follow is manifest. But so is

> "the interstate judicial system's interest in obtaining the most efficient resolution of the controversies; and the shared interest of the several states in furthering fundamental social policies."

World-Wide Volkswagen, 444 U.S. at 292.

This action is just one of many that have been or will be instituted against Iowa National's agents; the evidence and witnesses as to all of them are located mostly in Iowa.

> "The burden and inconvenience of the defendants in having to defend in [Iowa] rather than [Wyoming] is not so unreasonable that it results in a denial of due process."

All-Star, 327 N.W.2d at 654.

Accordingly, the Court concludes the Motions to Dismiss of each of the Defendants herein should be overruled.

ORDER

IT IS THEREFORE ORDERED that the Motions to Dismiss filed by both the corporate Defendant and the individual Defendant herein be and the same are hereby overruled.

IT IS FURTHER ORDERED that said-Defendants shall further move or plead as required by the Rules of Civil Procedure.

DATED this 23 day of March, 1988.

/s/ Glenn E. Pille
GLENN E. PILLE, Judge
Fifth Judicial District of Iowa

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa, as Liquidator of Iowa National Mutual Insurance Company, Plaintiff, vs. DOUBLETREE AGENCY and ROGER K. BOWER, Defendants.	Equity No. CE23-13565-619 RULING ON MOTIONS TO DISMISS

(Filed March 23, 1988)

The above-captioned matter came on for hearing before the undersigned Judge on March 11, 1988, on the Separate Motions to Dismiss filed by Defendants Doubletree Agency and Roger K. Bower. The hearing was held by telephone conference. Plaintiff was represented at the hearing by Attorney John Vernon. The Defendants were represented at the hearing by Attorney Dennis Kirven. The court, having reviewed the record and file herein, having heard the statements of counsel, and being otherwise fully advised in the premises, finds the following ruling should be entered.

STATEMENT OF THE CASE

This case comes before this court upon the Petition of William D. Hager, Commissioner of Insurance of the State of Iowa, serving as Liquidator of Iowa National Mutual Insurance Company. The Petition was filed pursuant to Iowa Code Chapter 507C as part of the Liquidator's duties to collect "debts and monies due and claims belonging to the insurer, wherever located" (section 507C.21(1)(f)). The Liquidator herein claims certain monies past due and owing from both the corporate Defendant (Doubletree Agency) and the individual Defendant (Roger K. Bower) pursuant to Section 507C.33(1)(a) in the amount of $5,355.06 in unpaid premium and unearned commission. The Petition alleges the individual Defendant, Roger K. Bower, personally guaranteed "the full and faithful performance of section XII, PREMIUM ACCOUNTING, of the Company-Agency Agreement" between Iowa National and Doubletree Agency.

Both the individual Defendant, a resident of Wyoming, and the corporate Defendant, a Wyoming corporation, herein challenge the jurisdiction of the Iowa court.

The Liquidator is specifically empowered to sue to collect agents' balances in the Iowa District Court for Polk County, Section 507C.4(5); and personal jurisdiction over persons sued "in an action on or incident to an obligation, if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement," is specifically conferred by statute, Section 507C.4(3)(a), assuming proper service.

The court adopts, as it is required to do, the uncontroverted statements made in the Petition and affidavits

herein. See *Norton v. Local Loan*, 251 N.W.2d 520, 521 (Iowa 1977).

CONCLUSIONS

As well pointed out by the Defendants in their Brief, to establish personal jurisdiction over a nonresident defendant, the defendant must have sufficient minimum contacts with the state of Iowa so as to comply with traditional notions of fair play and substantial justice. See *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). As such, personal jurisdiction under Iowa Rule of Civil Procedure 56.2 is co-extensive with what is permitted by the Fourteenth Amendment due process clause to the United States Constitution. *Al-Jon, Inc. v. Garden Street Iron and Metal, Inc.*, 301 N.W.2d 709, 711 (Iowa 1981). Accordingly, Plaintiff must demonstrate the Defendants had sufficient minimum contacts with the state of Iowa to satisfy due process requirements.

For the reasons indicated by the Plaintiff in his "Resistance to Motions to Dismiss" and for the reasons indicated hereunder, this Court concludes the Motions to Dismiss filed by both the individual Defendant and the corporate Defendant should be overruled.

Without reiterating each of the contacts between the Iowa forum and the corporate Defendant as contained in the Affidavit and the Supplemental Affidavit of Michael Westhoff, this Court simply notes numerous contacts are so indicated. It is clear to the court from reviewing the Affidavits that there was a continuous course of conduct and business between Doubletree Agency and Iowa

National's home office in Cedar Rapids, Iowa, for about 12 years Prior to insolvency.

It is also apparent to this Court that the accounting and billing functions were prepared in Cedar Rapids, Iowa. Payment by the agency was to be remitted to the home office in Cedar Rapids, Iowa. Questions or problems dealing with an agency account were handled by the Agency Accounting Department in Cedar Rapids, Iowa. (see Exhibits 4 and 5 of Westhoff Affidavit.) Of necessity, the corporate Defendant had numerous mail and phone contacts with the Plaintiff in the state of Iowa. *Midwest Packaging Corp. v. Oerlikon Plastics, Ltd.*, 279 F.Supp. 816, 818 (S.D. Iowa 1968). The Court is pursuaded by the rationale of *Matter of the Liquidation of All-star Ins. Corp.*, 327 N.W.2d 648 (Wis. 1983), appeal dismissed for want of a substantial federal question, 461 U.S. 951 (1983), as applied to the facts of this case and finds that the Defendant Doubletree Agency's contacts with Iowa are such that it is fair and reasonable to require Defendant to defend this suit in this forum. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

The court concludes said corporate Defendant had sufficient minimum contacts within the state of Iowa, and accordingly its Motion to Dismiss should be overruled.

The Motion to Dismiss of the individual Defendant Roger K. Bower presents a substantially closer question.

The issue of the Motion to Dismiss filed by the individual Defendant herein is whether or not the signing of a "personal guarantee" establishes sufficient minimum contacts in the present situation to satisfy the due process clause of the Fourteenth Amendment. Iowa Code Section

507C.4(3)(a) explicitly gives the Iowa courts personal jurisdiction over persons like Defendant in proceedings like this one.

Both counsel have briefed well the legal precepts involved in such determination, and the court sees no need to reiterate those precepts here.

It is clear to this Court that the individual Defendant knew he was guaranteeing a contract between an insurance company located in Cedar Rapids, Iowa, and his own Wyoming agency. He obviously also realized that many of the acts necessary for the performance of that contract by necessity would take place in Iowa. *Midwest Packaging Corp.* The individual Defendant, by signing a contract with an Iowa company, availed himself of the privilege of invoking the benefits and protections of Iowa's laws. Additionally, the state of Iowa would, and clearly does, have a significant interest in the ramifications of that personal guarantee.

Notwithstanding the individual Defendant's attempt to minimize his contact as simply the signing of a "personal guarantee," it is clear to this Court that he realized such a personal guarantee was the key that allowed the corporate agency to do business with the Iowa corporation.

Additionally, the special legislation (Chapter 507c of the Code of Iowa), coupled with the facts of this case, confers jurisdiction over the individual Defendant herein. Section 507C.4(3)(a) provides:

> In an action on . . . an obligation if the person served is obligated to the insurer in any way *as an incident to an agency . . . arrangement*

> that may exist or has existed between the insurer and the agent or broker. (Emphasis added by the court.)

This Court concludes said statute serves as a quasi long-arm statute. It applies here. The special legislation combined with the facts and the personal guarantee herein confers jurisdiction upon this Court. The foreseeability requirement that the Defendants could be sued in Iowa is met by Section 507C.4(3)(a) (effective date July 1, 1984).

All personal guarantors were thereafter on notice that if they entered into or continued in an agency agreement with an insurer domiciled in Iowa, and if the insurer became insolvent and was ordered liquidated, they (the personal guarantors) could expect to be sued by the Liquidator in Iowa on the Company-Agency Agreement.

When an insurer is liquidated, agents' balances are likely to constitute a large share of its assets. Moreover, they are assets difficult to collect. The Iowa Act makes collection of these balances easier and more economical by allowing the Iowa courts "to obtain jurisdiction over nonresident agents in order to efficiently and inexpensively gather up the outstanding assets of the insolvent insurer." *All-Star*, 327 N.W.2d at 653.

Iowa's interest in Providing a forum for this suit and the others like it that are sure to follow is manifest. But so is

> "the interstate judicial system's interest in obtaining the most efficient resolution of the

> controversies; and the shared interest of the several states in furthering fundamental social policies."

World-Wide Volkswagen, 444 U.S. at 292.

This action is just one of many that have been or will be instituted against Iowa National's agents; the evidence and witnesses as to all of them are located mostly in Iowa.

> "The burden and inconvenience of the defendants in having to defend in [Iowa] rather than [Wyoming] is not so unreasonable that it results in a denial of due process."

All-Star, 327 N.W.2d at 654.

Accordingly, the Court concludes the Motions to Dismiss of each of the Defendants herein should be overruled.

ORDER

IT IS THEREFORE ORDERED that the Motions to Dismiss filed by both the corporate Defendant and the individual Defendant herein be and the same are hereby overruled.

IT IS FURTHER ORDERED that said Defendants shall further move or plead as required by the Rules of Civil Procedure.

DATED this 23 day of March, 1988.

/s/ Glenn E. Pille
GLENN E. PILLE, Judge
Fifth Judicial District of Iowa

Supreme Court, U.S.
FILED
OCT 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-288

In The

Supreme Court of the United States

October Term, 1989

DOUBLETREE, A Wyoming Corporation, ROGER K. BOWER, ALDEN INSURANCE AGENCY, A Wyoming Corporation, and LARRY R. ALDEN,

Petitioners,

v.

WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa, as Liquidator of Iowa National Mutual Insurance Company

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Iowa

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

ARE THE PETITIONERS, AND EACH OF THEM, SUBJECT TO *IN PERSONAM* JURISDICTION IN IOWA IN THESE ACTIONS?

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No. 89-288

In The

Supreme Court of the United States

October Term, 1989

DOUBLETREE, A Wyoming Corporation, ROGER K. BOWER, ALDEN INSURANCE AGENCY, A Wyoming Corporation, and LARRY R. ALDEN,

Petitioners,

v.

WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa, as Liquidator of Iowa National Mutual Insurance Company,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Iowa

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Respondent is in substantial agreement with petitioners' statement of the case. He wishes to expand only on the following points.

Domestic insurers are exempt from Chapter 7 of the Federal Bankruptcy Act. 11 U.S.C. § 109(b)(2) (1982).

Accordingly, the liquidation of insolvent insurers is handled in the state courts pursuant to state statutes, in this case Iowa's Insurers Supervision, Rehabilitation and Liquidation Act, Chapter 507C of the Iowa Code (1985) ("the Act").

Iowa National Mutual Insurance Company was a property and casualty insurer domiciled in Iowa. Its liquidation is now proceeding, pursuant to Chapter 507C, under the supervision of the Iowa District Court for Polk County. Respondent Hager, Iowa's Commissioner of Insurance and Iowa National's statutory liquidator, is charged with collecting all "debts and monies due and claims belonging to the insurer, wherever located," § 507C.21(1)(f), for distribution to rightful claimants in accordance with their statutory priorities, § 507C.42.

Among those by whom money is owed are Iowa National's former agents, of which there were 1,360 scattered throughout 15 states when the company was ordered liquidated.

The agents all did business with Iowa National pursuant to a standard Company-Agency Agreement. They were responsible (among other things) for the collection of *premium* due on Iowa National policies sold by them, and for payment of the premium, less commission, directly to Iowa National's home office in Cedar Rapids, Iowa. In case of policy cancellation or premium reduction, the agents were also required to refund to Iowa National the resulting "return" or *unearned commission*.

Section 507C.33(1)(a) of the Act provides in part that:

> An agent, broker, premium finance company or any other person responsible for the payment of

> a premium is obligated to pay an *unpaid premium* for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from the person any part of an unearned premium that represents *commission* of the person. [Emphasis added].

At the outset, $31.7 million in unpaid premium and unearned commission was owed by Iowa National's agents under this statute.[1] The liquidator is specifically empowered to sue to collect these monies, § 507C.21(1)(f) and (l), in the Iowa District Court for Polk County, § 507C.4(5); and personal jurisdiction over agents thus sued, assuming proper service, is specifically authorized by statute, § 507C.4(3)(a).

In the case of agencies organized as corporations, Iowa National frequently required, as a condition of appointment and as part of the Company-Agency Agreement, that the agencies' principals personally guarantee "the full and faithful performance" of the agencies' premium accounting and payment obligations. The personal guarantors thus also became responsible for the payment of premium to Iowa National. Section 507C.4(3)(a) again authorizes the Polk County Court to exercise jurisdiction over such persons in actions by the liquidator to collect unpaid premium and unearned commission due.

The jurisdictional and certain other provisions of the Act are part of a system of interrelated state statutes whose goals are twofold: to foster "cooperation between

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[1] As of this writing, agents balances still outstanding have been reduced to about $4.2 million.

states" in the liquidation of multi-state insurers; and to enhance the efficiency and economy of such liquidations. *Cf.* § 507C.1(4)(c) and (e) (purposes of the Act). Efficiency and economy result from concentrating in a single forum – the domiciliary liquidation court – as much as possible of the litigation affecting an insolvent insurer's estate. One can readily appreciate that suit against all agents, for example, in a single forum, is much more efficient and inexpensive than suit in all the counties in all the states where the agents may be found.

> "The connections between the insurer and the persons listed in this subsection [§ 507C.4(3)] are close enough that a statute giving such personal jurisdiction, for purposes of actions arising out of the relationship, satisfies the requirements of due process."

Matter of All-Star Insurance Corp., 327 N.W.2d 648, 653 (Wis.), *appeal dismissed for want of a substantial federal question*, 461 U.S. 951 (1983).[2] Cooperation between states is facilitated by reciprocity provisions in the several state statutes. As to agents balances in particular, § 507C.52(1) provides that:

> [T]he domiciliary liquidator of an insurer domiciled in a *reciprocol state* shall be vested with the title to the assets, property, contracts, and rights of action, *agents' balances*, books, accounts and other records of the insurer located in this state.

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[2] *Quoting* Committee Comment on the identical section of Wisconsin's Insurers Rehabilitation and Liquidation Act, Wis. Stats. Ann. § 645.04(5) (1977). Iowa's Act is derived from Wisconsin's, via model legislation drafted by the National Association of Insurance Commissioners. *See State ex rel. Hager v. Iowa Nat. Mut. Ins. Co.*, 430 N.W.2d 420, 422 (Iowa 1988).

> * * * The domiciliary liquidator may immediately recover *balances due from agents* . . . located in this state. [Emphasis added].

Many states, including Wyoming (where petitioners reside), have adopted the Uniform Insurers Liquidation Act, which contains an exactly parallel provision. *Cf.* Wyo. Stat. § 26-28-113(b) (1977). The more recent liquidation acts adopted in Iowa and about 13 other states are

> based substantially on the Uniform Insurers Liquidation Act which is integrated into [them], and "both modified and extended to assure more efficient regulation of interstate delinquency problems."

Matter of All-Star Insurance Corp., supra, 327 N.W.2d at 652 (again quoting Committee Comment). These interrelated state statutes demonstrate the shared policy of the several states to cooperate in the efficient and economical liquidation of multi-state insurers.

There is no need to belabor here the frequent and substantial contacts between petitioners and Iowa National's home office in Cedar Rapids, pursuant to the business they jointly did. These are well summarized in the opinion of the court below (App. 1-15). Respondent would only emphasize that the personal guarantors involved here – Messrs. Bower and Alden – were no mere passive bystanders: each was actively interested and involved as a shareholder, director, employee, and the president of his agency. Each signed his agency's agreement with Iowa National both as president and as personal guarantor.

REASONS FOR DENYING THE WRIT

A. Summary.

These cases involve straightforward application of settled law to their facts. Every court that has applied the law to similar facts has reached the same result. No novel issue is presented; no conflict in the decisions exists; the decision below was unquestionably correct. There are no "special [or] important" reasons why certiorari should be granted.

B. The Facial Challenge Has No Merit.

Although not advertised as such, nearly two pages of the Petition (pp. 9-10) are devoted to a sort of facial challenge to Iowa Code § 507C.4(3)(a). The argument is that the statute lays down a "mechanical" jurisdictional criterion and "override[s] the case-by-case analysis required in determining sufficient minimum contacts under the Fourteenth Amendment."

This challenge was considered and rejected by the court below (App. 3-5). The court construed § 507C.4(3)(a)

> as incorporating the requirements of "necessary minimum contact[s]" as embodied in [Iowa Rule of Civil Procedure] 56.2 thereby adopting the minimum contacts principles of *International Shoe*. We conclude that the statute when considered in this manner is facially valid.

(App. 4-5).

C. Applicable Law is Settled.

The cases turn on analysis of their facts under the principles articulated in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and

> further developed by the Supreme Court in later cases. *See, e.g., Burger King v. Rudzewicz*, [471 U.S. 462 (1985)]; *World-Wide Volkswagen Corp. v. Woodson*, [444 U.S. 286 (1980)]; *Hanson v. Denckla*, [357 U.S. 235 (1958)]; *McGee v. International Life Ins. Co.*, [355 U.S. 220 (1958)].

Opinion of the court below (App. 6).

McGee is particularly relevant, because like these cases it involved the business of insurance, which "the State treats as exceptional and subjects to special regulation." *Hanson v. Denckla, supra*, 357 U.S. at 252.

Burger King is also particularly relevant, because like these cases it involved commercial actors who

> "reach[ed] out beyond one state and create[d] continuing relationships and obligations with citizens of another state" . . . .

Burger King, supra, 471 U.S. at 473 (*quoting Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647 (1950).

D. The Court Below Correctly Applied the Law to the Facts.

As the following analysis shows, the court below correctly concluded that each of the petitioners may constitutionally be held to answer in Iowa in these cases.

1. Nature, Quality, and Quantity of Contacts.

a. As in *Burger King*, the personal guarantors sued here (Bower and Alden) set up corporations through which to conduct their businesses. Nevertheless, Iowa National "insisted that [they] remain personally liable for their [agency] obligations." *Cf. Burger King*, 471 U.S. at 467 n. 6. Moreover, unlike the defendant in *Burger King*, Bower and Alden were active participants in the business of their agencies, *see* p. 5, *supra*. "[Bower and Alden] most certainly knew that [they were] affiliating [themselves] with an enterprise based primarily in [Iowa]." *Cf. Burger King*, 471 U.S. at 480; *and see* the findings of the trial court here:

> [Bower and Alden each] knew he was guaranteeing a contract between an insurance company located in Cedar Rapids, Iowa, and his own Wyoming agency;

each one

> realized such a personal guarantee was the key that allowed the corporate agency to do business with the Iowa corporation;

and each

> obviously realized that many of the acts necessary for the performance of that contract by necessity would take place in Iowa.

(App. 20-21, 28). Performance of the personal guarantees, if necessary, would take place in Iowa, by payment there; and failure of performance has its adverse effect in Iowa.

b. All petitioners were commercial actors who undertook interstate contractual obligations that created substantial connections between themselves and Iowa.

They "reach[ed] out beyond [Wyoming] and create[d] continuing relationships and obligations with [a] citizen of [Iowa]." Their business activities were "purposefully directed" toward a citizen of Iowa; they "purposefully derived benefit from their interstate activities." *Cf. Burger King*, 471 U.S. at 473 and 476.

c. The direct contact between petitioners and Iowa, incident to their agency agreements, was frequent and substantial. *See* decision of court below (App. 11-12). These contacts were far from "random", "fortuitous", or "attenuated". *Cf. Burger King*, 471 U.S. at 475.

d. Although petitioners' contacts with Iowa were apparently exclusively by telephone and mail,

> it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines;

and

> so long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

Burger King, 471 U.S. at 476.

2. Nexus Between Contacts and These Suits. The monies sued for are unpaid premium and unearned commission owed precisely on account of petitioners' activities as agents of Iowa National. Their obligations to pay were assumed under the same contracts pursuant to which their many contacts with Iowa took place.

3. - Foreseeability of Suit in Iowa.

> [T]he foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.

World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 297. *Cf. Burger King,* 471 U.S. at 472:

> The "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, [citation], and the litigation results from alleged injuries that "arise out of or relate to" those activities. [Citation].

In view of the nature of petitioners' contacts with Iowa, from which this litigation directly arises, the fair warning requirement is satisfied here without more.

But there is more: there is § 507C.4(3)(a) of the Iowa Code, which authorizes personal jurisdiction in Iowa in suits like these, over persons who are

> obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker.

This statute was enacted in 1984. Petitioners were then on explicit notice of their liability to suit in Iowa in just such proceedings as these. They continued in their agency relationships with Iowa National thereafter. They can hardly now complain that they did nothing that would reasonably require them to anticipate being haled into the Iowa courts in the event of Iowa National's liquidation.

4. Iowa's Interest in Providing a Forum for these Suits; Interest of Other States and of the Interstate Judicial System. Iowa's strong interest in providing a forum for these suits, and for the many others like them, is manifest. But so is

> the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several states in furthering fundamental social policies.

World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 292. Furtherance of these interests is among the explicit purposes of Iowa Code Chapter 507C and of the related insurer liquidation legislation adopted elsewhere. *See* pp. 3-5, *supra.* These matters are well discussed in the decision below (App. 14-15), and in *Matter of All-Star Insurance Corp., supra,* 327 N.W.2d at 651-654.

5. Convenience of the Parties. This factor again weighs in favor of Iowa as the forum for these suits. *See* the decision below (App. 15).

6. Conclusion. The decision below was correct on its merits.

E. There is No Conflict in the Decisions.

Petitioners have not been able to point to a single case that is in conflict either directly or in principle with the decision below.

On the other hand, the decisions of two other courts directly support the decision below.

1. In *Matter of All-Star Insurance Corp., supra,* 327 N.W.2d 648, Illinois and Louisiana agents of an insolvent

Wisconsin insurer were held suable in Wisconsin for unpaid premium and unearned commission owed the Wisconsin liquidator. The subsequent appeal to this Court was dismissed for want of a substantial federal question, 461 U.S. 951 (1983).

2. In *Hager v. Anderson-Hutchinson Insurance Agency, et al.*, Civil No. 86-841-E (S.D. Iowa, rulings and orders filed June 6, 1986, April 22, 1987, and July 19, 1989), Missouri and Wisconsin agents of Iowa National itself, and their personal guarantors, have been held suable in Iowa for unpaid premium and unearned commission owed Iowa National's liquidator, the Respondent here.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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